



C.M.A(MD)No.304 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 29.07.2024

Pronounced on : 30.08.2024

CORAM

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

C.M.A(MD)No.304 of 2021

1.Mylathal

2.N.Sakthivel

3.N.Loganayakee

... Appellants / Petitioners

Vs.

1.G.Vijayalakshmi

2.The Branch Manager,
The New India Assurance Company Ltd.,
Micro Office, 1st Floor, C.V.Complex,
Kannankurichi - 636 008,
Mittiyam Petunampatty Village,
Salem District,
Tamil Nadu.

... Respondents / Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 Motor vehicles Act to set aside the judgment and decree dated 04.01.2020 passed in M.A.C.O.P.No.2/2017 on the file of learned Motor Accident Claims Tribunal cum Subordinate Court, Veda sandur.



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For Appellants : Mr.R.Senthilkumar

For R1 : No appearance

For R2 : Mr.C.Deepak

JUDGMENT

This Civil Miscellaneous Appeal is filed to set aside the judgment and decree dated 04.01.2020 passed in M.A.C.O.P.No.2/2017 on the file of learned Motor Accident Claims Tribunal cum Subordinate Court, Vedasandur.

2. The case of the prosecution is that on 06.09.2016, at about 6.30 a.m., the deceased Nachimuthu was riding a two wheeler bearing registration number TN 59 AQ 1596 along with one A.Perumal as a pillion rider on the Karur to Dindigul National Highways. When they were nearing the place of occurrence, namely Surya mill, a Maruti Swift car bearing registration number TN 52 Y 2877 which belongs to the first respondent in the main petition drove the same in a rash and negligent manner and hit the two wheeler. As a result of which, the deceased Nachimuthu and the pillion rider Perumal sustained grievous injuries. They were taken to the Government Hospital,



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Dindigul. But Nachimuthu died on 06.09.2016 without responding to the treatment. A case in Crime No.142 of 2016 was registered against the appellant vehicle driver. The deceased was aged about 65 years at the time of accident and earning Rs.12,000/- per month by doing agriculture coolie work. Claiming compensation amount of Rs.30 Lakhs, the claim petition was filed.

3. That was resisted by the insurance company by filing counter, stating that the deceased Nachimuthu was not owning proper driving license. Without licence to drive, he drove the same in a rash and negligent manner and invited the accident. A case was registered only against the deceased. It was closed as action dropped after investigation. Other customary denials were made.

4. Regarding the first aspect of negligence, the Tribunal recorded a finding that the occurrence took place because of the rash and negligent driving on the part of the deceased himself. So the claimants are not entitled for any compensation. Against which this Civil Miscellaneous Appeal is preferred by the claimants.



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5. Learned counsel for the appellant would submit that the Tribunal recorded a wrong finding regarding the occurrence. The nature of the accident does itself indicates that the rash and negligent driving on the part of the first respondent vehicle driver. Simply because a case was registered against the deceased by the appellant, it do not indicate that there was negligence.

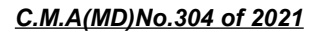
6. To answer this issue, the records were called for. There is no evidence on record to show that independent witnesses was examined on the side of the claimant, to show the occurrence. P.W.1 is not the eye witness to the occurrence. Similarly, on the side of the insurance company also, no independent witness was examined. R.W.1 who is the investigation officer has spoken about the investigation particulars. R.W.2 is the official of the insurance company who is also not a competent witness to speak the occurrence. In the absence of any direct evidence on the occurrence, based upon the investigation done by the police, negligence has been fixed upon the deceased.



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7. As per the FIR, the deceased was riding his two wheeler from South to North direction. The vehicle was coming in the opposite direction. The place of occurrence is shown as the centre median on the East. For a person riding a two wheeler from South-North direction, left hand side is on the West. So it appears that the vehicle driver crossed the center median and came in the opposite direction. At that time, it appears that first respondent vehicle came in the opposite direction and hit the deceased. So it is clearly seen that both are responsible for the occurrence. The deceased ought to have waited before passing to the other side of the road. Similarly, the first respondent vehicle driver ought to have been careful near the crossing road. Had the first respondent vehicle driver slowed down the vehicle by anticipating the cross, the accident would have been avoided.

8. I find that both are contributed to the accident. Considering the manner of the accident this Court fixes the liability at 50 : 50. The finding of the Tribunal on the point of negligence is required to be revisited and accordingly the finding is set aside for the reasons stated above.



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Particulars	Amount
Loss of Income	Rs. 4,00,000/-
Loss of consortium	Rs. 1,20,000/-
Loss of Estate	Rs. 15,000/-
Funeral Expenses	Rs. 15,000/-
Total compensation awarded	<u>Rs. 5,50,000/-</u>

10. In the award amount, 50% was deducted towards contributory negligence (550000/2). After deducting the compensation is fixed at Rs.2,75,000/- is fixed as compensation for the claimants.

11. Accordingly, this Civil Miscellaneous Appeal is allowed and the order passed by the Tribunal is set aside. The award of compensation is fixed as follows:

(i) The quantum of compensation awarded is fixed by this Court as ***Rs.2,75,000/- (Rupees Two Lakhs Seventy Five Thousand only)*** with interest at the rate of 7.5% per annum.

(ii) The Second respondent / insurance company is directed to deposit the award amount together with interest at the rate of 7.5% per annum from



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the date of claim petition till the date of deposit and with cost to the credit of M.A.C.O.P.No.2/2017 on the file of learned Motor Accident Claims Tribunal cum Subordinate Court, Veda sandur, within a period of ONE month from the date of receipt of a copy of this judgment.

(iii) On such deposit being made, the first appellant / first claimant is entitled for a sum of **Rs.1,83,334/- (Rupees One Lakh Eighty Three Thousand, Three Hundred and Four only)** with interest at the rate of 7.5% per annum and the appellants 2 and 3 / Claimants 2 and 3 are entitled for a sum of Rs.45,833/- (Rupees Forty Five Thousand Eight Hundred and Thirty Three only) each/-, after following the due process of law, less any amount already received by them.

(iv) No costs.

30.08.2024

NCC: Yes / No
Index: Yes / No
Internet : Yes / No

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To

- 1.The Motor Accident Claims Tribunal cum Subordinate Court, Veda sandur
- 2.The Section Officer, Vernacular Records Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN, J.

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Pre-Delivery Judgment made in

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